In the second, may be expected interesting and profitable notes and comments upon legal events. In the third, an especial effort will be made not to refer to every case, but to give such critical and helpful analysis of the most important recent cases as will serve to show their real effect upon the development of the law. In the department of book reviews, it will be the aim to give honest, impartial and competent estimates of the newest books, and helpful reviews of the current legal literature. All articles and book reviews will appear over the signatures of the writers.

It will be the aim to make the journal practical without usurping the functions of the text-book or the digest, and scholarly without becoming so academic in its character as to be out of touch with the needs and aims of the lawyer of today. It will not be local in its character or be confined to the discussion of law-school problems.

The magazine will be under the editorial management of a member of the faculty, assisted by an Advisory Board, but all of the other members of the faculty will co-operate in conducting it. Articles from members on other faculties in the University upon subjects of legal interest may also be expected, and contributions from outside sources will frequently appear.

The magazine will contain about eighty pages in each issue, and will regularly appear on the first of each month in the college year, exclusive of October.

This enterprise is in no sense undertaken for the pecuniary benefit of its projectors, or any of them. All profits, if any, which may accrue, will be devoted to the improvement of the magazine, and to the promotion of the welfare of the Law Department.

Founded in this spirit, the projectors make bold to appeal for support to the alumni and friends of this Law School, and to the members of the legal profession in general.

NOTE AND COMMENT

THE RIGHT OF A DE JURE OFFICER TO RECOVER SALARY OR FEES PAID TO A DE FACTO OFFICER.—The question of the right of a *de jure* officer, who has established his title to the office, to recover from the municipality, or from the *de facto* officer, the amount of salary or fees paid by the municipality to the *de facto* officer, was involved in the recent interesting case of *Coughlin* v. *McElroy*, et al., 50 Atl. Rep. 1025, decided January 9, 1902, by the Supreme Court of Connecticut. It appeared that Coughlin and McElroy were rival candidates for the office of tax collector of the City of Bridgeport. As a result of the election, McElroy was regularly declared elected, and in good faith qualified and entered upon the performance of the duties of the office. Coughlin contested the election and was finally held to

be entitled to the office. (*Coughlin* v. *McElroy*, 72 Conn. 99, 43 Atl. Rep. 854, 77 Am. St. Rep. 301.) While McElroy was performing the duties of the office, he was, in pursuance of an established custom, permitted by the city authorities to retain, out of the funds collected by him, the compensation of the office. Coughlin having established his title to the office, brought this action against the city and McElroy to recover the amounts so retained by McElroy, with the assent of the city, as his compensation. The court held that the retention of the compensation by McElroy with the assent of the city, under the circumstances named, must be regarded as a payment of the same by the city to McElroy, in good faith, and before he was ousted. Proceeding from this point, the court said: "This being so, the question is whether the city, having in good faith paid to the *de facto* officer, before judgment of ouster, the fees of the office, is liable to the *de jure* officer for such fees. Upon this question the decisions of the courts of this country are in direct conflict. Quite a number of courts of high authority, among which may be mentioned those of California, Maine, Tennessee, Wyoming, and Pennsylvania, hold that such a payment does not protect the community against the claims of the *de jure* officer. *People* v. *Smith*, 28 Cal. 21; *Andrews* v. *Portland*, 79 Me. 484, 10 Atl. 458, 10 Am. St. Rep. 280; *Mayor*, etc., v. *Woodward*, 12 Heisk. 499, 27 Am. Rep. 750; *Rasmussen* v. *Board* (Wyo.) 56 Pac. 1098, 45 L. R. A. 295; *Philadelphia* v. *Rink* (Pa.), 2 Atl. 505. On the other hand, the courts of a majority of the states that have had occasion to pass upon this question hold that such a payment does protect the community. Among the courts holding this doctrine may be mentioned those of the states of Michigan, New York, Missouri, Ohio, Kansas, Nebraska, and New Hampshire. *Board* v. *Benoit*, 20 Mich. 176, 4 Am. Rep. 382; *Dolan* v. *Mayor*, etc., 68 N. Y. 274, 23 Am. Rep. 168; *McVeany* v. *Mayor*, etc., 80 N. Y. 185, 36 Am. Rep. 600; *State* v. *Clark*, 52 Mo. 508; *Westberg* v. *City of Kansas City*, 64 Mo. 493; *Steubenville* v. *Culp*, 38 Ohio St. 23, 43 Am. Rep. 417; *Commissioners* v. *Anderson*, 20 Kan. 298, 27 Am. Rep. 171; *State* v. *Milne* (Neb.), 54 N. W. 521, 19 L. R. A. 689, 38 Am. St. Rep. 724; *Shannan* v. *Portsmouth*, 54 N. H. 183. It seems to us that the rule laid down in this last class of cases is, in reason, the better rule. It rests upon the familiar and reasonable rule that persons having the right to do business with a *de facto* officer, like the one in question, have the right to regard him as a valid officer, and the right to make payments to him without the risk of having to pay a second time. This is the rule that protected the taxpayers in making payments to McElroy, and there appears to be no good reason why it should not be applied to payments made by the city to him in good faith, and before judgment of ouster. Our conclusion is that the city is not liable to the plaintiff for the fees paid by it to the *de facto* collector. * * * *

"The next question is whether the plaintiff is entitled to recover from the *de facto* officer the fees paid to such officer by the city; and the answer to this depends upon the answer to the further question whether this can be done at common law, and without the aid of a statute. The courts of this country that have had occasion to pass upon this last question have almost unanimously answered it in the affirmative. That, in cases like the present, the legal right to the office carries with it the right to the salary and emoluments thereof; that the salary follows the office; and that the *de facto* officer, though

he performs the duties of the office, has no legal right to the emoluments thereof — are propositions so generally held by the courts as to make the citation of authorities in support of them almost superfluous. Nearly all, if not all, cases hereinbefore cited upon both views as to the liability of the city, hold that the *de facto* officer, for fees and emoluments of the office received by him, is liable at common law to the officer *de jure*. So far as we are aware, the only well-considered case taking a contrary view of the law is that of *Stuhr* v. *Curran*, 44 N. J. Law, 186, 43 Am. Rep. 353; and that was decided by a divided court, standing seven to five. We think the able dissenting opinion of Chief Justice Beasley in that case shows conclusively that at common law, in a case like the present, the *de jure* officer is entitled to recover from the *de facto* officer. Another well-considered case directly in point in favor of this view is that of *Kreitz* v. *Behrensmeyer*, 149 Ill. 496, 36 N. E. Rep. 983, 24 L. R. A. 59."

The decision of the court is undoubtedly in accordance with the weight of authority. (See MECHEM on PUBLIC OFFICERS, §332.) To the list of states holding that the municipality can not be compelled to pay to the *de jure* officer after payment in good faith to the *de facto* officer, may be added:— Arizona (*Shaw* v. *Pima County*, Ariz. , 18 Pac. Rep. 273), South Dakota, (*Fuller* v. *Roberts Co.*, 9 S. Dak. 216, 68 N. W. Rep. 308. See also, *Selby* v. *Portland*, 14 Oreg. 243. 58 Am. Rep. 307.

EXEMPLARY DAMAGES WHERE ACTUAL DAMAGES MERELY NOMINAL— The United States Circuit Court of Appeals, for the second circuit, in the case of *Press Pub. Co.* v. *Monroe*, 19 C. C. A. 429, 38 U. S. App. 410, 73 Fed. Rep. 196, 51 L. R. A. 353, has added the weight of its authority to the list of those which hold that exemplary damages may be awarded, in a proper case, even though the actual damages which can be shown are merely nominal. The opposite view, commonly attributed to the case of *Stacy* v. *Portland Pub. Co.*, 68 Me. 279, proceeds upon the theory that exemplary damages are awarded not only to compensate the individual but also for the protection of the public interests, and asserts that "if the individual has but a nominal interest, society can have none. . . If there was enough in the defense to mitigate the damages to the individual, so did it mitigate the damages to the public as well." The same view has been announced in *Kuhn* v. *Railway Co.* 74 Iowa, 137, 37 N. W. Rep. 116; *Maxwell* v. *Kennedy*, 50 Wis. 645, 7 N. W. Rep. 657; and *Schippel* v. *Norton*, 38 Kan. 567, 16. Pac. Rep. 804. These cases, however (and there are others to the same effect, *e. g.*: *Gilmore* v. *Mathews*, 67 Me. 517; *Freese* v. *Tripp*, 70 Ill. 496; *Meidel* v. *Anthis*, 71 Ill. 241; *Ganssly* v. *Perkins*, 30 Mich. 492), are said by the Court of Appeals, to be "plainly at variance with the theory upon which exemplary damages are awarded in the Federal courts, namely, as something additional to, and in no wise dependent upon, the actual pecuniary loss to the plaintiff, being frequently given in actions where the wrong done to the plaintiff is incapable of being measured by a money standard. *Day* v. *Woodworth*, 54 U. S. (13 How.) 370, 14 L. ed. 184. There is room for argument against the allowance of exemplary damages at all as anomalous and illogical. Some courts have held that it is